IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CIVIL APPLICATION NO. 4108 OF 2004
IN
FIRST APPEAL NO. 1267 OF 2004

Office Notes, Office Memoranda of of Coram, appearances, Court's orders and Registrar's orders : Court's or Judge's orders

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Shri D.K. Dhakephalkar for the applicant.

Shri Rajiv Kumar with D.Y. Chitnis for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 3RD DEC., 2004
Not on board.

P.C.:

1. Heard.

2. Rule. Rule made returnable forthwith by consent.

2. This is an appliction filed by the appellant plaintiff seeking relief against the respondents seeking to restrain the respondents from creating third party right, title or interest in the in respect of the suit property which was involved in Spl. Civil Suit No. 305 of 1991.

3. Heard learned counsel for both parties. Perused the record including the pleadings.

4. The appellant-plaintiff filed the suit for specific performance of the agreement dated 1.9.1986 in respect of the property Plot No.401 (Now No.229), admeasuring 856 sq.mtrs., situated at Sindh Co-op. Housing Society, Baner Road, Aundh at Pune. The said suit was partly decreed. The specific performance was refused, however, it was decreed to the extent of recovery of the amount of Rs.4,60,000/-. The present appeal is filed against the said judgment refusing to grant specific performance of the agreement.

5. The learned counsel for the respondent submitted that, once the alternative prayer of the plaintiff was granted, there is no prima facie case made out, as alleged, to seek interim relief pending the appeal in the nature in which it is sought for. In support of the submission, learned counsel for the respondent sought to rely upon two judgments of the Supreme Court. Perused the judgments. It is quite obvious that the ratios laid down in both the Supreme Court rulings are pertaining to the merits of the suit and it need not be addressed. Here the question is

to protect the property peding the appeal by which the specific performance is sought for. In view of the facts and circumstances, the application deserves to be allowed to the limited extent that the respondent should be restrained from creating third party interest on the suit property which aspect would not prejudice their case at all.

In view of this position, the application is made absolute in terms of prayer clause (a) and stands disposed of.

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